IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 749 OF 1994.

Children's Academy. ... Petitioner

Versus.

Smt.Indira Ramachandran & anr. ... Respondents.

Shri Salgaonkar i/by M/s.Salgaonkar & Co.for the Petitioner.

Shri B.C.Shah for the Respondent.

CORAM : SMT.RANJANA DESAI &
ABHAY S. OKA, JJ.

DATED : 29th November, 2005.

P.C.:

1. The petitioner is an unaided school established in the year 1970. In this petition, the petitioner has impugned the order dated 18th January 1994 passed by the Industrial Court in Appeal (PGA) No.7 of 1993. Respondent 1 was one of the teachers employed by the petitioner-school. It appears that she resigned from the service with effect from 31st December 1991. Respondent 1 made an application for payment of gratuity under section 4 of the Payment of Gratuity Act, 1972 in the Third Labour Court, Bombay, being Application No.96 of 1992. While disposing of the application, the Controlling Authority and the Judge of the 3rd Labour Court vide his order dated 21st July 1993 held that though the educational institution is an industry,

teacher is not a workman, and therefore, provisions of the Payment of Gratuity Act cannot be made applicable to the teacher. In view of this, it was held that respondent 1 is not entitled to gratuity as per the provisions of the Payment of Gratuity Act.

2. Respondent 1 carried the matter in appeal being Appeal No.7 of 1993 before the Appellate Authority under the Payment of Gratuity Act. While dealing with the question whether the petitioner is a commercial establishment under the Payment of Gratuity Act and whether respondent 1 has proved that she is entitled to gratuity amount, the Industrial Court held that the establishment of the petitioner-school is a commercial establishment under the provisions of section 1(3)(b) of the Payment of Gratuity Act and hence the 3rd Labour Court was wrong in rejecting the application for gratuity. The Industrial Court held that respondent 1 is entitled to get gratuity. It is this order which is impugned in this petition.

3. We have heard the learned Counsel appearing for the parties. Our attention is drawn to the judgment of the Supreme Court in Ahmedabad (P.) Primary Teachers' Association v/s. Administrative Officer, 2004 I CLR 495. Same question came up for consideration before the Supreme Court in this case. After considering the provisions of the Payment of Gratuity Act 1972 and the

relevant case law, the Supreme Court has observed as under:

> "23. The Legislature was alive to various kinds of definitions of word 'employee' contained in various previous labour enactments when the Act was passed in 1972. If it intended to cover in the definition of 'employee' all kinds of employees, it could have as well used such wide language as is contained in section 2(f) of the Employees' Provident Funds Act, 1952 which defines 'employee' to mean 'any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establihment....' Non-use of such wide language in the definition of 'employee' in Section 2(e) of the Act of 1972 reinforces our conclusion that teachers are clearly not covered in the definition."

In view of this authoritative pronouncement of the Supreme court, the Industrial Court has fallen into a grave error in holding that respondent 1 is entitled to gratuity.

4. In view of this we set aside the impugned judgment and order dated 18th January 1994 passed by the

Industrial Court, Bombay. Order of the Controlling Authority under the Payment of Gratuity Act dated 21st July 1993 in Application (PGA) No.96 of 1992 is restored. Petition is disposed of. If the amount is deposited in this Court as per the order dated 8th March 1994 passed by this Court, the Registry shall allow the Petitioner to withdrew the said amount.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)